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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ARAVIND SOUNDARARAJAN

Appeal 2008-0604
Application 10/043,378[1]
Technology Center 2600

Decided: August 19, 2008

Before MAHSHID D. SAADAT, MARC S. HOFF,
and KEVIN TURNER, *Administrative Patent Judges.*

HOFF, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from a Final Rejection of claims 1-19. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

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[1] Application filed October 26, 2001. The real party in interest is Koninklijke Philips Electronics N.V..

Appellant's invention relates to a system and method for automatically determining and applying viewer television channel preferences (Spec. 7). An evaluation program analyzes data concerning what channels were watched and for what duration, and assigns a weight value to the channels viewed, based on how much time the viewer spent on this channel relative to others (Spec. 7). In one embodiment, the most heavily weighted channels appear first, at the 'top' of the electronic program guide (EPG) whenever it is displayed (Spec. 8).

Claims 1 and 12 are exemplary:

1. In a television system capable of selectively displaying program input from a plurality of programming channels, a system for enhanced programming channel-selection control, said system comprising:

a selector for selecting the programming input to process for display;

a timer for timing the amount of time each channel is selected for display;

a database for recording channel-selection durations;

a processor in communication with the database for periodically compiling a program selection control list, wherein the program selection control list includes channels selected and assigned weight values relative to other listed channels, said weighted values calculated according to a pre-determined algorithm from the channel-selection durations stored on the database.

12. A method for enhancing channel selection in a television system capable of displaying a program selected from a plurality of available program channels, said method comprising:

maintaining a viewing-history record of the amount of time each displayed program channel is displayed by the television system;

ranking each displayed channel relative to the other displayed channels according to the display time in the viewing-history record; and

creating a program selection control list for one of a plurality of viewers based on the displayed channel ranking.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Bates	US 6,721,953 B1	Apr. 13, 2004

Claims 1-8, 10, and 11 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Bates.

Claim 9 and 12-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bates.

Appellant contends that Bates does not anticipate claim 1 because Bates does not teach a database for recording channel-selection duration, nor selecting and assigning weight values to channels calculated from the channel-selection durations stored on the database (Br. 6, 7). Appellant further contends that Bates does not render claim 12 obvious for the same reasons articulated with respect to the anticipation rejection of claim 1, *supra*, and contests the Examiner's use of official notice that it would have been obvious to extend the teachings of Bates to "a plurality of viewers" (Br. 9).

Rather than repeat the arguments of Appellant or the Examiner, we make reference to the Brief (filed May 2, 2007) and the Answer (mailed June 12, 2007) for their respective details.

ISSUE

The principal issue in the appeal before us is whether the Examiner erred in holding that Bates teaches compiling a program selection control list that includes channels selected and assigned weight values relative to other listed channels, the weighted values calculated according to a pre-determined algorithm from stored channel-selection durations, as recited in claim 1.

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

The Invention

1. According to Appellant, he has invented a system and method for automatically determining and applying viewer television channel preferences (Spec. 7).

2. An evaluation program analyzes data concerning what channels were watched and for what duration, and assigns a weight value to the channels viewed, based on how much time the viewer spent on this channel relative to others (Spec. 7).

3. In one embodiment, the most heavily weighted channels appear first, at the 'top' of the electronic program guide (EPG) whenever it is displayed (Spec. 8).

Bates

4. Bates teaches an apparatus, program product and method in which the scroll rate used to scroll through the program information for various television programs available to a television viewer is dynamically adjusted, e.g., by slowing down the scroll rate to increase the visibility for important program information and speeding up the scroll rate to decrease the visibility of less important program information (col. 2, ll. 45-57).

5. Bates teaches that "it is determined whether … the channel being viewed … was viewed for a sufficient period of time to signify a program suitable for designation as a 'favorite' program" (col. 7, l. 64 – col. 8, l. 1). If the program is deemed a favorite, and is already in the favorite program table, its 'watched count' is incremented by 1; if it is not yet in the favorite program table, relevant program identification information is added to the table, along with an initial watched count of 1 (col. 8, ll. 8-24).

6. Bates Figure 3 shows "a favorite *programs* table data structure utilized by the set top box of FIG. 2" (col. 3, ll. 52-53; emphasis added). In the examples illustrated in Figure 3, channel 006 is listed twice, because two distinct programs that aired on channel 006 were added to the favorite programs list.

7. Bates teaches that one may modify its embodiments such that user viewing habits are based on a channel-by-channel basis, storing favorite channels rather than individual programs (col. 13, ll. 34-36).

PRINCIPLES OF LAW

Anticipation is established when a single prior art reference discloses expressly or under the principles of inherency each and every limitation of the claimed invention. *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1347 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79 (Fed. Cir. 1994).

"Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'" *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734, (2007). The question of obviousness is resolved on the basis of underlying factual determinations including (1) the scope and content of the prior art, (2) any differences between the claimed subject matter and the prior art, (3) the level of skill in the art, and (4) where in evidence, so-called secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18, (1966). *See also KSR*, 127 S. Ct. at 1734 ("While the sequence of these questions might be reordered in any particular case, the [*Graham*] factors continue to define the inquiry that controls.")

ANALYSIS

Claims 1, 4-8, 10, and 11

The Examiner argues that Bates teaches a database for recording channel-selection durations, as recited in claim 1, citing Bates' disclosure that information which signifies that a program has been viewed an

additional time in excess of the predetermined threshold is recorded (col. 8, ll. 19-33) as meeting this limitation.

We disagree with the Examiner's interpretation of Bates. Bates makes clear that what is recorded is that a program was viewed (i.e., selected) longer than a threshold length of time, rather than the actual duration that a channel was selected. Bates explains: "it is determined whether ... the channel being viewed ... was viewed for a sufficient period of time to signify a program suitable for designation as a 'favorite' program" (FF 5). If the program is deemed a favorite, and is already in the favorite program table, its 'watched count' is incremented by 1; if it is not yet in the favorite program table, relevant program identification information is added to the table, along with an initial watched count of 1 (FF 5). Because Bates stores a count of the number of times a particular program was selected for longer than a threshold duration, rather than storing the duration that a channel was selected, we find that Bates does not meet the limitation of "a database for recording channel-selection durations."

The Examiner further argues that Bates teaches a program selection control list including channels selected and assigned weight values relative to other listed channels, as recited in claim 1. According to the Examiner, in the process of determining whether a channel being viewed was viewed for a sufficient period of time, "channels are ranked and weighted, and in the process of 'assigning channel weight values,' channel-viewing time is a criterion for consideration" (Ans. 12, referring to Bates col. 7, l. 61 – col. 8, l. 33). The Examiner cites Figure 3, element 54 as illustrating that [channels] are effectively ranked by watched count (*id.*).

We disagree that Bates assigns weight values to channels. As mentioned *supra*, Bates teaches monitoring whether a given program is selected for viewing for longer than a threshold period of time, and once it is, adding that program to a favorite programs list (or incrementing its watched count) (FF 5). Figure 3 shows "a favorite *programs* table data structure utilized by the set top box of FIG. 2" (FF 6). We observe that in Bates's examples illustrated in Figure 3, channel 006 is listed twice, because two distinct programs that aired on channel 006 were added to the favorite programs list (*id.*). Bates' disclosure that his objective is to generate a favorite *programs* table rather than a favorite *channels* table, combined with his example in which a single channel is listed in multiple entries of such a table, make it clear that what is weighted in Bates (by "Watched Count") is not channels, but programs.

We note that Bates teaches that one may modify its embodiments such that user viewing habits are based on a channel-by-channel basis, storing favorite channels rather than individual programs (FF 7), which the Examiner cites as evidence that Bates teaches assigning weight values to channels (Ans. 12). However, we do not agree that this modification would result in Bates teaching the claimed invention. If one modified Bates in this manner, Bates would then monitor a given channel to determine if it is selected for longer than a threshold period; once it is, the channel would be added to a favorite channels table. The various watched counts of the favorite channels could be construed as weights, except that the final clause of claim 1 recites that weighted values are "calculated according to a pre-determined algorithm from the channel-selection durations stored on the

database." As explained *supra*, Bates (even as modified) does not teach storing channel-selection *durations*; it merely increments a count when a program (or as modified, a channel) is selected for longer than a threshold duration. Even under the modification disclosed in column 13, then, Bates would not teach every element of claim 1.

Because we find that Bates does not teach every element recited in claim 1, we therefore find error in the Examiner's rejection of claim 1 under 35 U.S.C. § 102(e). Claims 4-8, 10, and 11, not argued separately, all depend from claim 1 directly or indirectly; we therefore find error in the rejection of claims 4-8, 10, and 11 as well.

Claims 2 and 3

Claims 2 and 3 depend from claim 1. Because we do not sustain the rejection of claim 1, *supra*, we also do not sustain the rejection of claims 2 and 3, for the same reasons.[2]

Claim 9

Claim 9, dependent from claim 1, stands rejected as obvious over Bates, with the Examiner taking Official Notice that it would have been obvious to modify Bates to include the limitations recited in claim 9. Because we find *supra* that Bates does not teach all the limitations of claim 1, we do not sustain the rejection of claim 9, for the same reasons.[3]

[2] We need not reach Appellant's separate arguments for the patentability of claims 2 and 3, respectively.
[3] We need not reach Appellant's separate arguments for the patentability of claim 9.

Claims 12-19

Claims 12-19 stand rejected as obvious over Bates. The Examiner addresses the limitation of "creating a program selection control list for one of a plurality of viewers based on the displayed channel ranking" by holding that because duplicating parts is obvious, it would have been obvious to duplicate the user and/or system in Bates, in order to share the system with other users (Ans. 8). As with claim 1, the Examiner argues that Bates teaches "maintaining a viewing-history record of the amount of time each displayed program channel is displayed by the television system" (Ans. 16), referring Appellant to column 7 and Figure 3 of Bates.

We are not persuaded by the Examiner's position. As explained *supra*, we find that Bates does not teach maintaining a record of the *amount of time* each displayed program channel is displayed, but merely maintains a record ("watched count") of the number of times a program is displayed for longer than a threshold amount of time (FF 5). Bates is also concerned with developing a favorite programs list, which necessarily contains data records of favorite programs, rather than favorite channels. Finally, simply duplicating the parts of Bates would not result in a system that is functional for multiple users, because Bates contains no teaching that it can maintain multiple favorites lists, one for each user, and no teaching of any mechanism whereby a user might identify himself to the system of Bates such that the system would know to assign program selection data to that user rather than any other.

We therefore, find error in the Examiner's rejection of claim 12 under 35 U.S.C. § 103. Because claims 13-19 depend from claim 12, we also find error in the Examiner's rejection of claims 13-19, for the same reasons.

CONCLUSION OF LAW

We conclude that Appellant has shown that the Examiner erred in rejecting claims 1-19. On the record before us, claims 1-19 have not been shown to be unpatentable.

DECISION

The Examiner's rejection of claims 1-19 is reversed.

REVERSED

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